

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Vikram Bhatia, D.D.S., et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

3M Company,

Defendant.

Case No. 0:16-cv-01304-DWF-DTS

**DECLARATION OF JUSTIN L.
WIND IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FOURTH DISBURSEMENT OF
SETTLEMENT FUNDS TO
CLAIMANTS, PAYMENT OF
FEES AND EXPENSES FOR THE
CLAIMS ADMINISTRATOR,
AND PROPOSAL FOR
DISTRIBUTION OF REMAINING
FUNDS**

I, Justin L. Wind, hereby declare and state as follows:

INTRODUCTION

1. ***Personal Information.*** My name is Justin L. Wind. I am Senior Counsel at BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231 (“BrownGreer”), the Claims Administrator in this matter.

2. ***The Capacity and Basis of this Declaration.*** I am over the age of 21. Unless otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge, information received from the parties in this proceeding, and information provided by my colleagues at BrownGreer.

3. ***Background.*** BrownGreer provided Court-approved notice to the class and accepted and reviewed claim submissions for the initial claim period covering full or partial debonds that Class Members repaired or paid to have repaired on or before May 10, 2019

(the “Initial Claim Period”). BrownGreer also reviewed claim submissions for the supplemental claim period covering full or partial debonds that Class Members repaired or paid to have repaired from May 11, 2019, to September 7, 2020 (the “Supplemental Claim Period”). Class Members could submit claims electronically through the Settlement Website or by completing and mailing a hard copy claim form to the mailing address established by the Claims Administrator. Class Members had the option to submit three types of claims: (1) a Fixed Amount claim of \$250 per debond, requiring no documentation; (2) a Documented Amount claim whereby the Class Member must submit documented proof of unreimbursed, out-of-pocket losses; or (3) a “mixed” claim for Fixed Amount debonds and Documented Amount debonds (“Mixed Amount Claims”).

4. *Claims Review Process.* Counsel for the Parties established review guidelines in consultation with BrownGreer for the evaluation of Fixed Amount debonds (the “Review Criteria”). The Review Criteria included, among other triggering factors: (1) whether a claimant’s reported count of purchased Lava Ultimate blocks exceeded materially the sales information provided by 3M distributors and 3M product return data (the “Class Data”); (2) whether a claimant asserted that it seated more Lava Ultimate crowns from those purchased blocks than the Class Data showed were available to be seated; (3) whether a claimant asserted that it repaired more Lava Ultimate crown debonds than it claimed to have seated; (4) whether a claimant asserted an excessive rate at which the Lava Ultimate crowns debonded compared to the total number of crowns seated; whether a claimant previously signed a release with Defendant, 3M Company, precluding them from settlement participation; and (5) whether a claimant could demonstrate class

membership. As it relates to the three separate claim types, BrownGreer assessed the Fixed Amount portions of claims in both claim periods, while the Settlement Counsel Review Committee (the “SCRC”) examined the Documented Amount components and recommended settlement awards based on their evaluation of documents submitted by the claimant.

5. *First Disbursement of Settlement Funds.* In the Initial Claim Period, BrownGreer, in consultation with Plaintiff’s Lead Counsel (“Lead Counsel”), reviewed 450 timely claims with at least one Fixed Amount debond. Of those, BrownGreer determined that 249 claims, valued at \$4,278,500.00, satisfied the Review Criteria and could be paid immediately. On June 23, 2020, the Court approved Lead Counsel’s request for disbursement of settlement funds to pay the 249 eligible claimants. BrownGreer mailed settlement checks to these claimants on August 4, 2020, and all checks from that disbursement have been cashed.

6. *Second Disbursement of Settlement Funds.* On February 9, 2021, the Court granted Plaintiff’s Motion for Second Disbursement of Settlement Funds. The second disbursement compensated Initial Period claimants falling into one of the following categories: (1) Fixed Amount claimants who provided documentation substantiating a full or partial award in response to outreach from BrownGreer communicating a deficiency in their claim; (2) Mixed Amount claimants who BrownGreer, Lead Counsel, and the SCRC determined eligible for compensation; and (3) timely-submitted Documented Amount claimants for whom the SCRC recommended payments. In all, the Court approved disbursements totaling \$3,689,553.52 to the above-described claimants. BrownGreer

mailed settlement checks to these claimants on February 17, 2021, and all checks have cleared the settlement account.

7. ***Third Disbursement of Settlement Funds.*** The third disbursement encompassed claimants in both the Initial and Supplemental Claim Periods. As in the second disbursement, the Initial Period claimants fell into three classifications: (1) five Fixed Amount claimants who provided documentation substantiating a full or partial award in response to outreach from BrownGreer communicating a deficiency in their claim; (2) seven Mixed Amount claimants who BrownGreer, Lead Counsel, and the SCRC determined eligible for compensation; and (3) 11 Documented Amount claimants for whom the SCRC recommended payments in accordance with the Plan of Distribution. Separately, the third disbursement also included four claimants who submitted Documented Amount claims in the Supplemental Claim Period and for whom the SCRC reached an eligibility determination. Finally, five claimants in the third disbursement submitted Mixed or Documented Amount claims in the Initial Claim Period, as well as claims in the Supplemental Claim Period and BrownGreer, Lead Counsel, and the SCRC confirmed those claims' eligibility. On September 9, 2021, the Court approved payments amounting to \$3,006,157.70 to the 32 claimants detailed above. Following the Court's approval, BrownGreer issued checks to 30¹ of the 32 claimants, and all 30 checks cleared the settlement account.

¹ Two of the claimants approved for partial payment by the Court in the Third Disbursement provided supplemental documentation that, after review by the SCRC, justified full award amounts. These two claimants are part of the Fourth Disbursement

8. *Remaining Supplemental Period Claims – Fixed Amount Claims.* In the Supplemental Claim Period, BrownGreer received 93 Fixed Amount claims through the Settlement Website or via mailed hard copy Claim Form. After applying the Fixed Amount Review Criteria established in conjunction with the Parties, BrownGreer determined 62 claims eligible for a full award, as they did not trigger any of the deficiencies outlined in the Review Criteria. These 62 claims are valued at \$570,750.00 and represent 2,283 Fixed Amount debonds.

For the other 31 Fixed Amount claims, BrownGreer sent communications to claimants whose claims triggered at least one of the review issues set out in Section 4 above. These communications consisted of messages through the Settlement Website portal and direct emails. The communications explained the triggering factors, requested an explanation or further supporting materials to address these factors, and explained the discounted amount, if any, a claimant would receive if they did not respond to the communications. BrownGreer and the SCRC reviewed the responses received and made final determinations. Of the 31 Fixed Amount claims that triggered a review issue, 23 resulted in a denial, two resulted in an award equaling the full amount of compensation claimed, and six resulted in a partial award, based on the responses (or lack thereof) received. Overall, the eight eligible claims are valued at \$156,500.00 and represent 626 Fixed Amount debonds.

that is the subject of this Declaration, and their claims are detailed more fully in subsequent sections.

Exhibit A to this Declaration lists the full details on the number of debonds claimed, awards sought, and award amounts for the 70 eligible Fixed Amount claims at issue in the fourth distribution.

9. *Remaining Initial Period Claims – Claims Previously Approved.* After the previous three disbursements, there remain two claimants from the Initial Claim Period for whom the Court approved a payment, but to whom BrownGreer has not yet issued a check. The first claimant, Confirmation ID 847806405, filed a Mixed Amount claim that included 237 Fixed Debonds, valued at \$59,250.00, and 30 Documented Debonds, valued at \$49,450.00, for a total claimed amount of \$108,700.00. BrownGreer and the SCRC reviewed the original claim submission and determined the claimant eligible for a partial award of \$91,050.00, representing 84% of the total compensation sought. The second claimant, Confirmation ID 470147673, submitted a Documented Amount claim for 43 Documented Debonds, valued at \$31,175.00. After reviewing the claim submission, the SCRC determined the claimant eligible for a partial award of \$27,550.00, representing 88% of the total compensation sought. The Court approved both partial awards in the Third Disbursement of Settlement Funds.

After the Court's approval, BrownGreer issued a notice to the two claimants that documented the partial award determinations and, in accordance with the Court's order, granted the claimants 20 days to provide additional documentation in support of the total compensation sought. The notice also explained that if the claimants did not submit further proof, the partial award would serve as the default award and BrownGreer would issue a check for the default award amount. Both claimants timely responded to the notice and

submitted further support for their claims in the form of patient notes, financial records, and other documents justifying the initial claimed amount. After reviewing the newly-submitted documentation, BrownGreer and the SCRC recommend that both claimants receive the full amount of compensation sought in their claim – \$108,700.00 and \$31,175.00, respectively – as detailed in Exhibit B to this Declaration.

10. *Fourth Disbursement of Settlement Funds – Claims Summary.* As explained in Sections 8-9, BrownGreer, Lead Counsel, and the SCRC assessed the outstanding claims that make up, in part, the fourth distribution. Overall, 70 Fixed Amount claims in the Supplemental Claim Period are eligible for a full or partial award, totaling \$727,250.00 (Exhibit A), and two previously approved, partial-award claims from the Initial Claim Period (one Mixed Amount, one Documented Amount) are now eligible for a full award, totaling \$139,875.00 (Exhibit B).

11. *Distribution of Remaining Settlement Funds.* Paragraph 13 of the Plan of Distribution approved by the Court in September 2019 states: “If monies remain in the Net Settlement Fund...from lack of claims or uncashed checks, Class Counsel will make a proposal to the Court for what to do with Remaining Funds, with the priority focused on additional distributions to Class Members...” If the Court approves the fourth distribution as contemplated currently, there will be \$9,155,805.22 in remaining funds, assuming all settlement checks clear the account. BrownGreer understands that Class Counsel proposes to distribute the remaining funds to claimants who submitted eligible Fixed Amount and Mixed Amount claims based on the number of Fixed Amount debonds for which they

received compensation. BrownGreer will be ready to issue such payments and administer the remaining settlement funds under Class Counsel's plan.

12. *Notice and Claims Administration Costs.* Since the Court's approval of BrownGreer as Claims Administrator in April 2019, BrownGreer has administered the notice procedure, processed claims, and made claim payments to eligible claimants in accordance with the Court's instructions. In presenting the costs of notice and claims administration to the Court, BrownGreer considered the following: (1) notice and administration fees and expenses incurred through April 30, 2022 – the last full month for which those figures are available; (2) future administration fees and expenses for the potential fourth distribution of settlement funds, if approved by the Court; (3) future administration fees and expenses for the potential distribution of remaining funds, if approved by the Court; and (4) ongoing maintenance costs for the Settlement Website and secure data storage of claim, claimant, and other settlement information through the anticipated remainder of the Dental Crown Settlement Program. In all, BrownGreer's total accrued and future notice and claims administration costs amount to \$647,060.11.

I, Justin L. Wind, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing and the attached are true and correct to the best of my knowledge. Executed on this 1st day of June 2022.



Justin L. Wind